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**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEVADA**

In re:

DOUBLE JUMP, INC.,  
  
Debtor.

Lead Case No.: BK-S-19-50102-gs  
Chapter 7

Substantively Consolidated with:

19-50130-gs	DC Solar Solutions, Inc.
19-50131-gs	DC Solar Distribution, Inc.
19-50135-gs	DC Solar Freedom, Inc.

CHRISTINA W. LOVATO,

Plaintiff,

v.

LBA REALTY FUND II-COMPANY I, LLC

Defendant.

Case No. 3:21-cv-00134-MMD

Adv. No. 21-05027-gs

**LBA REALTY FUND II-COMPANY I,  
LLC'S REPLY IN SUPPORT OF MOTION  
TO WITHDRAW REFERENCE OF  
ADVERSARY PROCEEDING AND  
TRANSFER VENUE**

**RELIEF IS SOUGHT FROM A UNITED  
STATES DISTRICT JUDGE**

Hearing Date: To be determined  
Hearing Time: To be determined  
Estimated Time for Hearing: To be determined

## INTRODUCTION<sup>1</sup>

The Court should immediately withdraw the reference of this adversary proceeding to the Bankruptcy Court given that the Bankruptcy Court is constitutionally prohibited from adjudicating the Trustee's claims against LBA and also cannot conduct the jury trial to which LBA is entitled. The Trustee concedes both of these significant points, but nonetheless incorrectly insists that litigating before the Bankruptcy Court and then litigating again before this Court will not result in duplication of efforts, inefficiencies, delay, and increased costs to the parties. The Trustee's additional arguments that the Bankruptcy Court has oversight over separate bankruptcy cases and that the Trustee has filed additional adversary proceedings have no bearing on the outcome of this adversary proceeding and should not guide this Court's decision here. Withdrawal of the reference of this adversary proceeding will not interfere with the uniform administration of those separate bankruptcy cases (the Trustee does not argue to the contrary), and the Trustee's suggestion that rulings reached in those bankruptcy cases or in other adversary proceedings would apply in this action raises significant due process concerns and exposes the Trustee's forum shopping.

Contrary to the Trustee's statements in the Opposition (at 8:6-7), LBA does not argue that immediately withdrawal of the reference is *mandatory*. Rather, as LBA explained in its Motion (at ¶¶ 7-8), because the Bankruptcy Court lacks constitutional authority to enter a final judgment (at any stage of the proceedings) and only this Court (or another federal district court) may conduct the required jury trial, this Court should exercise its discretion to withdraw the reference at this time and be involved in the steps leading up to dispositive motion practice and a jury trial. As many other courts have explained, immediately withdrawal of the reference is prudent so that the district court that will oversee the trial may become familiar with the matter.

Furthermore, the Trustee's Opposition does nothing to diminish that the events at issue in this action occurred in California, that the Trustee's substantive claim is based exclusively on California state law,<sup>2</sup> that the debtor entity at issue is a California corporation headquartered in

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<sup>1</sup> Capitalized terms have the meanings ascribed to them in LBA's Motion to Withdraw Reference of Adversary Proceeding and Transfer Venue (Dkt. No. 1) ("Motion").

<sup>2</sup> The Trustee's claims based on the Bankruptcy Code are merely procedural and provide that the Trustee has the authority to bring the substantive California state law claims and the right

California, and that the real property transaction in question involves a California parcel that is already the subject of an action pending in the Eastern District of California. The Trustee essentially asks the Court to prioritize over all else the happenstance of the Trustee's location and the pendency in Nevada of other proceedings that have no bearing on the outcome of this action. The Trustee's analysis of the non-exhaustive list of factors that courts sometimes consider is reflexive and purposefully ignores the numerous California-centric facts, witnesses, and law at issue here. Transfer of this action to the Eastern District of California is appropriate.

The Court should grant LBA's Motion in its entirety.

### **ARGUMENT**

#### **I. Withdrawal Of The Reference Of This Adversary Proceeding Is Appropriate At This Time.**

The Trustee does not dispute that the reference of this adversary proceeding must be withdrawn at some point in time. Indeed, the Trustee concedes that the claims at issue here "may not, as a constitutional matter, be adjudicated to 'final' judgment by a bankruptcy court." (Trustee's Response in Opposition to Defendant's Motion to Withdraw Reference and Transfer Venue (Dkt. No. 11) ("Opposition"), at 4:18-19.) The Trustee suggests, however, that the reference should be maintained because the Bankruptcy Court has statutory authority "to hear and enter proposed findings of fact and conclusions of law . . . subject to *de novo* review" by this Court. (*Id.* at 4:20-5:1.) The Trustee's suggestion is flawed, however, given the Trustee's equally important concession that the Bankruptcy Court is also constitutionally prohibited from conducting the jury trial to which LBA is entitled. (*Id.* at 7:17-18.) In other words, the Bankruptcy Court cannot hear the Trustee's claims in this action and propose findings of fact and conclusions of law given the constitutional prohibition on the Bankruptcy Court conducting a jury trial.

The Trustee's next argument is that judicial economy, delay, and costs to the parties favor maintaining the reference of this adversary proceeding until this action is trial ready. However, the Trustee's analysis is based on the flawed premise that the Bankruptcy Court's ruling on

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to recover if the Trustee prevails on such California state law claims.

1 “myriad” issues relating to the separate bankruptcy cases will create efficiencies here. The  
 2 question is whether withdrawal of the reference *of this adversary proceeding* will promote judicial  
 3 economy, the preservation of resources, and expediency. The answer unquestionably is yes. As  
 4 LBA has explained (and the Trustee does not refute), this adversary proceeding is in its procedural  
 5 infancy. No discovery has occurred, no scheduling orders are in place, and no decisions have been  
 6 rendered. (Motion, at ¶ 8.) Under such circumstances, no efficiency is to be gained by maintaining  
 7 the reference of the Adversary to the Bankruptcy Court. *See Dev. Specialists, Inc. v. Akin Gump*  
 8 *Strauss Hauer & Feld LLP (In re Thelen LLP)*, 462 B.R. 457, 473 (S.D.N.Y. 2011) (“[T]here is  
 9 no reason **not** to do now what must be done eventually.”) (emphasis added); *In re Align Strategic*  
 10 *Partners LLC*, No. 18-03325, 2019 Bankr. LEXIS 1906, at \*7-9 (Bankr. S.D. Tex. Mar. 5, 2019)  
 11 (withdrawal of reference appropriate where, as here, bankruptcy court has not developed  
 12 familiarity with particular adversary proceeding).

13 Furthermore, the Trustee’s concession that only this Court (or another federal district court)  
 14 has authority to enter final orders or a final judgment in this action necessarily guarantees a  
 15 duplication of efforts and waste of resources if the reference is maintained. In fact, under the  
 16 Trustee’s best-case scenario, this Court must still conduct a *de novo* review of the proceedings  
 17 before the Bankruptcy Court. (*See* Opposition, at 4:21:5-1). The parties should not be forced to  
 18 litigate before the Bankruptcy Court and then litigate all over again before this Court. Recognizing  
 19 this fact, other judges in this Court have granted motions to withdraw the reference in similar  
 20 scenarios. *See, e.g., Bagley v. Beville*, No. 13-cv-1119, 2013 U.S. Dist. LEXIS 100488 (D. Nev.  
 21 July 18, 2013) (Mahan, J.) (withdrawing reference appropriate given state law claims subject to *de*  
 22 *novo* review, even for pretrial motions, and delay and cost created by duplication of efforts between  
 23 two courts, and adjudication could not possibly disrupt uniformity of bankruptcy administration);  
 24 *Nelson v. XL Am., Inc. (In re Ameri-Dream Realty)*, No. 16-cv-00060 (D. Nev. Nov. 14, 2016)  
 25 (Dorsey, J.) (withdrawing reference before decision on dispositive motion that would be subject  
 26 to *de novo* review based on efficiency); *Shengdatech Liquidating Trust v. Hansen, Barnett, &*  
 27 *Maxwell, P.C.*, No. 13-cv-00563, 2013 U.S. Dist. LEXIS 168086 (D. Nev. Nov. 26, 2013) (Jones,  
 28 J.) (requirement of *de novo* review of all dispositive recommendations increases costs and delay,

1 and adjudication could not possibly disrupt uniformity of bankruptcy administration); *Herbst*  
 2 *Gaming, Inc. v. Insurcorp (In re Zante, Inc.)*, No. 10-cv-00231, 2010 U.S. Dist. LEXIS 137691  
 3 (D. Nev. Dec. 29, 2010) (Jones, J.) (withdrawal of reference will save time and money given  
 4 requirement for *de novo* review).

5 The Ninth Circuit has also endorsed withdrawal of the reference where, as here, a district  
 6 court necessarily must review *de novo* a bankruptcy court's findings of fact and conclusions of law  
 7 even if the reference is maintained. *See Sec. Farms v. Int'l Bd. of Teamsters, Chauffeurs,*  
 8 *Warehousemen and Helpers*, 124 F.3d 999, 1008 (9th Cir. 1997). As the Ninth Circuit observed,  
 9 it is both more efficient and less costly to have a single proceeding in the district court. *Id.* at 1009.  
 10 Also, the Trustee does not dispute that numerous other courts have withdrawn the reference of an  
 11 adversary proceeding at preliminary stages in light of the efficiencies and judicial economy to be  
 12 gained. (*See Motion*, at ¶ 9.)

13 Three of the factors addressed by the Trustee warrant special mention here, because they  
 14 are inapposite to the instant motion or favor immediate withdrawal of the reference. First, as Judge  
 15 Jones and Judge Mahan previously recognized, withdrawal of the reference of an adversary  
 16 proceeding does not impact the uniformity of a bankruptcy court's administration of a bankruptcy  
 17 case. *See Bagley*, 2013 U.S. Dist. LEXIS 100488; *Shengdatech*, 2013 U.S. Dist. LEXIS 168086.  
 18 The Trustee's California state law fraudulent conveyance claim simply has no bearing on the  
 19 uniformity of the administration of the entirely separate bankruptcy cases. Second, the Trustee  
 20 suggests at several points that the Bankruptcy Court has already reached conclusions that dictate  
 21 the outcome of this adversary proceeding. (*See Opposition*, at 3:12-4:5, 6:7-8, 6:20-7:1.) It is  
 22 plain that the Trustee prefers to maintain the reference of this adversary proceeding in order to take  
 23 advantage of what the Trustee perceives to be a favorable forum and leverage the Bankruptcy  
 24 Court's preconceived notions regarding the facts of this case to LBA's detriment. That sort of  
 25 forum shopping (and also LBA's fundamental due process rights) expressly favors withdrawal of  
 26 the reference. Finally, the Trustee argues that a policy favoring centralization of disputes before  
 27 the Bankruptcy Court favors denying LBA's instant motion, but the Trustee's authorities address  
 28 a bankruptcy court's refusal to compel arbitration of claims asserted *against* the debtor that were

intertwined with issues in the main bankruptcy case, *see Ackerman v. Eber (In re Eber)*, 687 F.3d 1123, 1130-31 (9th Cir. 2012), and a district court's *refusal* to transfer state-law claims to a bankruptcy pending in a different state in light of forum selection clauses, *see Balboa Capital Corp. v. Siddiqui Transitions MHT LLC*, No. 17-cv-01107, 2017 U.S. Dist. LEXIS 219888, at \*7 (C.D. Cal. Aug. 23, 2017).

The Court should reject the Trustee's invitation to duplicate efforts, increase costs to the parties, the Bankruptcy Court, and this Court, and insert unnecessarily delay into this proceeding. The Court should grant LBA's motion and immediately withdraw the reference.

## **II. After Withdrawing The Reference, The Court Should Transfer Venue Of This Action To The Eastern District Of California.**

As a preliminary matter, the Trustee is incorrect that this Court cannot decide a motion to transfer venue based on the Bankruptcy Court's Local Rules. Those rules have no application in this Court, and even if they did, those rules do not trump this Court's authority under federal statutes or as the Court of original jurisdiction over this adversary proceeding to transfer it to another venue. Notably, the Trustee cites no authority in support of her proposition.

Turning to the substance of the issue, the Trustee does not contest that the Complaint is predicated upon a fraudulent scheme perpetrated in California by individuals residing in California through a California limited liability company headquartered in California and involves claims related to the sale of a parcel of real property located in the Eastern District of California. (*See* Complaint, at ¶¶ 2, 5, 22, 23, 27.) Nor does the Trustee dispute that the key witnesses to the underlying facts are located in California. (*See* Opposition, at 12:15; *see also* Motion, at ¶ 13 (pointing out Trustee's reference to "insiders" with knowledge who presumably are located in California.) Nor does the Trustee dispute that the substantive claim in the Complaint is based on California state law and that the State of California has an interest in resolving within its borders a controversy arising out of events that occurred in California. (*See* Motion, at ¶ 14.)

In fact, stripped to its essence, the Trustee's opposition to a transfer of venue relies principally on two insignificant facts: (1) the Trustee is located in Nevada; and (2) the main bankruptcy cases are pending before the Bankruptcy Court in Nevada. The Trustee, as an



**CONCLUSION**

The Court should grant LBA's Motion, immediately withdraw the reference, and transfer venue of this action to the Eastern District of California.

Dated this 9th day of April, 2021.

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By: /s/ M. Ryan Pinkston

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 9, 2021, I electronically filed the foregoing document with the Clerk of the Court using the Court's CM/ECF system and that all participants in this case are registered CM/ECF users that will receive service through such system.

Dated this 9th day of April, 2021.

/s/ M. Ryan Pinkston